



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-916]

[C-570-917]

Laminated Woven Sacks from the People's Republic of China: Negative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce

PRELIMINARY DETERMINATION

The Department of Commerce ("the Department") preliminarily determines that the laminated woven sacks subject to this inquiry are not circumventing the antidumping and countervailing duty orders on laminated woven sacks from the People's Republic of China ("PRC"), as provided in section 781(d) of the Tariff Act of 1930, as amended ("the Act").¹

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

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SUPPLEMENTARY INFORMATION:

Background

On January 26, 2011, pursuant to sections 781(c) and (d) of the Act, and 19 CFR 351.225(i) and (j), Petitioners² submitted requests for the Department to initiate and conduct both a minor alterations inquiry and a later-developed merchandise anti-circumvention inquiry to determine whether laminated woven sacks printed with two colors in register and with the use of

¹ See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China, 73 FR 45941 (August 7, 2008); see also Laminated Woven Sacks From the People's Republic of China: Countervailing Duty Order, 73 FR 45955 (August 7, 2008), (collectively, "Orders").

² The Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation, (collectively, "Petitioners").

a screening process are circumventing the Orders.³ On March 25, 2011, Petitioners withdrew their request for the Department to initiate a minor alterations anti-circumvention inquiry pursuant to 781(c) of the Act and 19 CFR 351.225(i).⁴ On April 28, 2011, the Department initiated a later-developed merchandise anti-circumvention inquiry.⁵

On May 3, July 18, and September 2, 2011, the Department issued various questionnaires to interested parties. On July 15, 2011, the Department held a meeting with Petitioners to discuss the anti-circumvention inquiry.

Scope of the Orders

The merchandise covered by the orders is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics;⁶ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6305.33.0050 and 6305.33.0080.

³ See Petitioners’ Requests for Circumvention Inquiries dated January 21, 2011 and February 4, 2011.

⁴ See Petitioners’ Partial Withdrawal of Request For Determination of Circumvention (Printed Ink Colors) dated March 25, 2011.

⁵ See Laminated Woven Sacks From the People’s Republic of China: Initiation of Anti-Circumvention Inquiry, 76 FR 23791 (April 28, 2011) (“Initiation Notice”).

⁶ “Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Scope of the Anti-Circumvention Inquiry

The merchandise subject to the anti-circumvention inquiry is laminated woven sacks produced with two ink colors printed in register and a screening process (“screening-process sacks”). Petitioners allege that Chinese producers of screening-process sacks have adapted the screening process to create graphics that appear to have three or more distinct colors visible, although they are produced using only two inks and a screen. Petitioners contend that such graphics would normally be printed using three inks printed in register at three different print stations, which would then make them subject merchandise. However, by adapting the screening process, Petitioners state that Chinese producers of screening-process sacks are able to produce similar graphics while only using two inks, thus making merchandise that is out of scope and not subject to antidumping and countervailing duties.

The screening process at issue, as described by interested parties, only uses two ink colors printed in register at two different print stations. However, the artwork, by use of a screen, allows for different shades of a single color to appear on the bag. Thus, when printed, the

screening-process sacks appear to have been printed with more than two colored inks because more than two distinct colors are visible on the finished product. As an example of the screening-process sacks, the Department placed on the record of both proceedings five laminated woven sacks imported by Shapiro: two individual Manna Pro Horse Feed sacks, two individual Red Head Deer Corn sacks, and one Manna Pro Calf-Manna sack.⁷

Negative Preliminary Determination of Circumvention

For the reasons described below, we preliminarily determine that the screening-process sacks are not later-developed merchandise because they were commercially available at the time of the initiation of the less-than-fair-value (“LTFV”) investigation on laminated woven sacks from the PRC. Therefore, we also preliminarily determine that the screening-process sacks are not circumventing the Orders within the meaning of section 781(d) of the Act.

Applicable Statute

Section 781(d)(1) of the Act provides that the Department may find circumvention of an antidumping or countervailing duty order when merchandise is developed after an investigation is initiated (“later-developed merchandise”). In conducting later-developed merchandise anti-circumvention inquiries, under section 781(d)(1) of the Act, the Department first determines whether the merchandise under consideration is “later-developed.”⁸ To do so, the Department examines whether the merchandise at issue was commercially available at the time of the initiation of the LTFV investigation.⁹ We define commercial availability as “present in the

⁷ See Memo to the File from Jamie Blair-Walker regarding Anti-circumvention Inquiry of Laminated Woven Sacks from the People’s Republic of China on the subject of Meeting with Counsel for the Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation, dated July 15, 2011.

⁸ See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 71 FR 59075 (October 6, 2006) (“Candles Anticircumvention Final”) and accompanying Issues and Decision Memorandum at Comment 4; see also Erasable Programmable Read Only Memories from Japan: Final Scope Ruling, 57 FR 11599 (April 6, 1992)(“EPROMs from Japan”); Electrolytic Manganese Dioxide from Japan: Final Scope Ruling, 57 FR 395 (January 6, 1992)(“EMD from Japan”); Portable Electronic Typewriters from Japan, 55 FR 47358 (November 13, 1990).

⁹ See Candles Anticircumvention Final, 71 FR at 59077 and Comment 4, affirmed by Target Corp. v. United

commercial market or fully developed, i.e., tested and ready for commercial production, but not yet in the commercial market.”¹⁰ In other words, the Department normally considers: (1) whether it was possible, at all, to manufacture the product in question; and (2) if the technology existed, whether the product was available in the market.¹¹

If the Department determines that such merchandise was not commercially available at the time of the initiation of the LTFV investigation, and is thus later-developed, the Department will consider whether the later-developed merchandise is covered by the order by evaluating whether the general physical characteristics of the merchandise under consideration are the same as subject merchandise covered by the order¹², whether the expectations of the ultimate purchasers of the merchandise under consideration are no different than the expectations of the ultimate purchasers of subject merchandise¹³, whether the ultimate use of the subject merchandise and the merchandise under consideration are the same¹⁴, whether the channels of trade of both products are the same¹⁵, and whether there are any differences in the advertisement and display of both products.¹⁶ The Department, after taking into account any advice provided by the United States International Trade Commission (“ITC”), under section 781(e) of the Act, may include such imported merchandise within the scope of an order at any time an order is in effect.

States, 626 F. Supp. 2d 1285 (CIT 2009), and Target Corp. v. United States, 609 F.3d 1352, 1358-1360 (Fed. Cir. 2010) (“Target Corp. III”)(holding that Commerce’s interpretation of later-developed as turning on whether the merchandise was commercially available at the time of the investigation is reasonable).

¹⁰ See Target Corp. III, 609 F.3d at 1358; see also Candles Anti-circumvention Final at Comment 4.

¹¹ See Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 71 FR 32033, 32038 (June 2, 2006), *unchanged in Candles Anticircumvention Final*; see also EPROMs from Japan, 57 FR at 11602-3 (examining whether the technology to develop the new product existed at the time of the original investigation); Television Receiving Sets, Monochrome and Color, from Japan: Final Scope Ruling, 56 FR 66841 (December 26, 1991) (noting that LCD TV technology did not exist at the time the original product descriptions were developed)

¹² See section 781(d)(1)(A) of the Act.

¹³ See section 781(d)(1)(B) of the Act.

¹⁴ See section 781(d)(1)(C) of the Act.

¹⁵ See section 781(d)(1)(D) of the Act.

¹⁶ See section 781(d)(1)(E) of the Act.

Commercial Availability Analysis

In determining the commercial availability of the screening-process sacks at issue in this inquiry, the Department first examined whether it was possible to produce the merchandise. The Department then examined if there was evidence of the screening-process sacks being commercially available in the market prior to the initiation of the LTFV investigation.

As noted by the ITC, the developing nature of the industry at the time of the LTFV investigation could have had tempered the demand for screening-process sacks.¹⁷ Therefore, the Department examined whether the technology needed to produce screening-process sacks existed prior to the LTFV investigation as part of these preliminary results. Based on the record evidence, the Department finds that the technology for producing screening-process sacks was available prior to the LTFV investigation. From 2005 – 2007, all interested parties providing information and comments for this record purchased the technology to use a screening process in production of laminated woven sacks, although the number of inks that were printed on the laminated woven sacks varied for different products (i.e., included the use of only two inks as well as the use of three or more).¹⁸ Furthermore, all parties agree that the screening technology used on laminated woven sacks was not new at the time of the initiation of the LTFV investigation.¹⁹

With regard to whether the screening-process sacks were available in the market at the time of the LTFV investigation, in response to the initiation of this anti-circumvention inquiry, Shapiro submitted evidence of at least one sale destined for the United States of the screening-process sacks. Specifically, Shapiro provided an invoice, packing list, bill-of-lading, purchase

¹⁷ See Laminated Woven Sacks from China, Investigation Nos. 701-TA-450 and 731-TA-1122 (Preliminary), ITC Publication 3942 (August 2007) (“ITC Preliminary Determination”) at 31.

¹⁸ See Commercial Packaging’s Supplemental Questionnaire Response dated September 16, 2011 at 2; see also Response of the Laminated Woven Sacks Committee To The Department’s Questionnaire of September 2, 2011 dated September 16, 2011 at 4; see also Shapiro’s Supplemental Questionnaire Response dated September 16, 2011 at 2.

¹⁹ See Commercial Packaging’s Supplemental Questionnaire Response dated September 16, 2011 at 3; see also Petitioners’ Questionnaire Response dated May 18, 2011 at 12; see also Shapiro’s Supplemental Questionnaire Response dated September 16, 2011 at 2.

order, and approved screen artwork associated with the 2005 sale of the Manna Pro Horse Feed Sack.²⁰ The purchase order references the use of reverse printing with two inks: Red PMS 186 and Blue PMS 072.²¹ The corresponding artwork, signed and approved for production on February 15, 2005, in conjunction with the related paperwork discussed above demonstrates the use of a screen in production.²² Shapiro's supplier's use of the screening process in combination with two inks in production of laminated woven sacks beginning in 2005 was also confirmed in an affidavit from the Assistant Vice-President of Purchasing at Manna Pro, the customer that coordinates the design of, and buys, the Manna Pro Horse Feed Sack from Shapiro.²³ Shapiro also stated that it sold 147,842.50 lbs. of the Manna Pro Horse Feed Sack prior to the date of initiation of the LTFV investigation.²⁴ Although Shapiro states that it permanently changed the design of the art work to accommodate the use of only two inks and a screening process with respect to the specific sacks on this record after the publication of the preliminary determination in the LTFV investigation, Shapiro demonstrated that it used two inks and a screening process for some of the designs at least occasionally prior to the initiation of the LTFV investigation.²⁵ Finally, as demonstrated by an affidavit supplied by Commercial Packaging, the screening process has been used to produce graphics on laminated woven sacks prior to the LTFV investigation.²⁶ Therefore, the above information on the record demonstrates that sacks produced with a screening process and two inks were commercially available prior to the LTFV investigation.

²⁰ See Shapiro's Comments on Initiation dated May 19, 2011 at Exhibit 1.

²¹ See Id.

²² See Id. and at Exhibit 2.

²³ See Id. at Exhibit 3.

²⁴ See Id. at 2.

²⁵ See Shapiro's Supplemental Questionnaire Response dated July 28, 2011 at 1.

²⁶ See Commercial Packaging's Comments on Petitioners' Submission Dated May 17, 2011 dated June 2, 2011 at 9 and Exhibit 2.

Finally, parties provided affidavits on the record stating that using only two inks and a screening process reduces the cost of production.²⁷ Although Petitioners contend that, despite the use of only two print stands and fewer inks, the development of the artwork and the time needed to readjust the machinery could possibly increase the production costs of screening-process sacks versus subject merchandise, the Department finds that if the customer seeks a simpler graphic, the use of only two inks and a screening process is a viable option to produce a less complex and possibly more affordable image.²⁸

As demonstrated above, the screening technology existed prior to the LTFV investigation and had been applied to laminated woven sacks since 2005 (including with the use of only two inks). Thus, the Department finds that it was possible to produce screening-process sacks prior to the LTFV investigation and concludes that the screening-process sacks were commercially available, i.e., tested and ready for commercial production prior to the LTFV investigation.

Summary of Analysis

After analyzing the above factors, the Department has made a preliminary determination that the screening-process sacks are not later-developed merchandise.²⁹ The agreement of all parties that the technology was available prior to the initiation of the LTFV investigation coupled with the fact that Shapiro demonstrated the sale of screening-process sacks to the United States has led to the Department's preliminary determination that the screening-process sacks were commercially available prior to the initiation of the LTFV investigation and are therefore not later-developed merchandise. Furthermore, because the Department has preliminarily determined that the screening-process sacks are not later-developed merchandise, the Department does not need to consider the criteria in section 781(d) of the Act to determine if the

²⁷ See Shapiro's Comments on Initiation dated May 19, 2011 at Exhibit 3.

²⁸ See Commercial Packaging's Comments on Petitioners' Submission Dated May 17, 2011 dated June 2, 2011 at Exhibit 2.

²⁹ See Candles Anticircumvention Final, 71 FR at 59075 at Comment 4; see also EPROMs from Japan; EMD from Japan; Portable Electronic Typewriters from Japan, 55 FR 47358 (November 13, 1990).

screening-process sacks are subject merchandise.³⁰ Therefore, we preliminarily determine that, because the sacks are not later-developed merchandise, they do not circumvent the Orders.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.³¹ Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs.³² Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.³³ Case briefs and rebuttal briefs must be submitted on both proceedings.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days after the date of publication of this notice, pursuant to 19 CFR 351.310. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. If a hearing is requested, we will notify those parties that requested a hearing of a hearing date and time.

Final Determination

The final determination with respect to this anti-circumvention inquiry will be issued no later than February 16, 2012, including the results of the Department's analysis of any written

³⁰ See Electrolytic Manganese Dioxide from Japan: Preliminary Scope Ruling, 56 FR 56977 (Nov 7, 1991) ("if a product is developed before an antidumping case is initiated, the later-developed product provision is clearly inapplicable") unchanged in final EMD from Japan.

³¹ See 19 CFR 351.309(c)(1)(ii).

³² See 19 CFR 351.309(d).

³³ See 19 CFR 351.309(c) and (d).

comments. This preliminary negative circumvention determination is published in accordance with section 781(d) of the Act and 19 CFR 351.225.

Paul Piquado
Assistant Secretary
for Import Administration

November 15, 2011 _____
Date

[FR Doc. 2011-30164 Filed 11/21/2011 at 8:45 am; Publication Date: 11/22/2011]